IN THE

Supreme Court of Michigan

SHIRLEY HAMILTON, as Personal Representative of the Estate of ROSALIE ACKLEY, Deceased,

Plaintiff-Appellee,

and

BLUE CROSS/BLUE SHIELD OF MICHIGAN,

Intervening Plaintiff,

v.

MARK F. KULIGOWSKI, D.O.,

Defendant-Appellant.

Supreme Court No. 126275

Court of Appeals No. 244126

Saginaw County Circuit Court No. 00-033440-NH

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AMICUS CURIAE BRIEF OF ACCREDIATION COUNCIL FOR GRADUATE MEDICAL EDUCATION

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STATEMENT OF THE BASIS OF JURISDICTION

The Court granted the application for leave to appeal on July 12, 2005, and invited the Accreditation Council for Graduate Medical Education to file an amicus curiae brief.

STATEMENT OF QUESTIONS INVOLVED

In its order of July 12, 2005, the Court directed the parties to include among the issues to be briefed:

(1) The proper construction of the words "specialist" and "that specialty" in MCL 600.2169(1)(a) and MCL 600.2169(1)(b)(i); and

(2) The proper construction of "active clinical practice" and "active clinical practice of that specialty" as those terms are used in MCL 600.2169(1)(b)(i).

STATEMENT OF FACTS

The Accreditation Council for Graduate Medical Education accepts the parties' statement of facts.

ARGUMENT

The Accreditation Council for Graduate Medical Education ("ACGME") is a not for profit corporation that accredits over 8,000 programs in graduate medical education in the United States and its territories, which programs include over 100,000 resident physicians in 26 medical specialties and almost 100 subspecialties.

ACGME respectfully declines to take a position on the legal issues before this Court. The statute before the Court describes qualifications for experts who testify as to the standard of care in medical professional liability cases in Michigan courts. In this evidentiary context, the terms "specialist," "specialty," "active clinical practice," and "active clinical practices of that specialty" are better left for others to define. Nevertheless, ACGME provides some information about itself and what it does that hopefully will assist the Court in construing this statute.

Graduate medical education is the period of clinical education in a medical specialty after graduation from medical school, and it prepares physicians for independent practice in the specialty.[1] Programs in graduate medical education are commonly referred to as "residency programs," and graduate medical students are commonly referred to as "residents." Each residency program trains residents to practice a medical specialty. The exception is the "transitional year" which is a balanced program in multiple clinical disciplines designed to facilitate the choice of and/or preparation for a specific specialty.

Applicants with one of the following qualifications are eligible for appointment to ACGME-accredited programs: (1) graduates of medical schools in the United States and Canada accredited by the Liaison Committee on Medical Education ("LCME"); (2) graduates of colleges of osteopathic medicine in the United States accredited by the American Osteopathic

[1] ACGME accredits programs in graduate medical education. The American Osteopathic Association accredits residency programs in osteopathic medicine.

Association; (3) graduates of medical schools outside the United States and Canada who meet one of the following qualifications: (a) have received a currently valid certificate from the Educational Commission for Foreign Medical Graduates prior to appointment, or (b) have a full and unrestricted license to practice medicine in the United States licensing jurisdiction where they are in training; or (4) graduates of medical schools outside the United States who have completed a "Fifth Pathway" program provided by an LCME-accredited medical school.

Graduate medical education includes specialty-specific didactic instruction and clinical training. The essence of graduate medical education is participation by the resident in actual patient procedures under the supervision of residency program personnel. Throughout the residency program, the resident first observes and then participates with gradually increased responsibility in elements of patient care, all under supervision. Only upon completion of the residency program does the resident assume independent and unsupervised responsibility for patient care within the specialty of the residency program. Each residency program lasts from three years to seven years, and subspecialty residency programs ("fellowships") last an additional one to three years. Completion of a residency program is a prerequisite to physician certification by private specialty certifying boards.

A medical school graduate who proceeds directly into a specialty residency program usually does not qualify for a license for the independent practice of medicine. Most states will not grant a medical school graduate such a license unless the graduate first completes at least one year of clinical education in a residency program. E.g., 1987 AACS, R 338.2313(3) and 1994 AACS, R 338.2316(4)(b), R 338.2317(4), and R 338.2318(3)(c)(ii). Generally, for the initial years of their residencies, during which they are ineligible for full medical licensure, residents practice under "training licenses" issued by the state in which the residency program is located, if

the program meets state requirements. E.g., 1989 AACS, R 338.2329a. State licensing agencies accept training in ACGME-accredited residency programs as satisfying their graduate medical education requirements for licensure for the independent practice of medicine. E.g., Rule 338.2313(3).

Stakeholders in ACGME's accreditation process are residency programs, their sponsoring institutions, residents, medical students, the specialty boards of the American Board of Medical Specialties ("ABMS"), patients, payers, government (including state licensing agencies), and the general public. Accreditation offers these stakeholders assurance that a given residency program and its sponsoring institutions meet an accepted set of educational standards.

ACGME accredits residency programs leading to primary board certification by the 24 member boards of ABMS. Completion of an ACGME-accredited residency program is a prerequisite for certification in a primary board. Completion of an ACGME-accredited subspecialty program is also required before an individual can sit for board certification in the majority of subspecialties. In a few subspecialties, the ABMS-member boards approve advanced training programs in the absence of ACGME accreditation standards; in several others, ACGME accredits subspecialty training programs, but no board certificate is offered.

To develop and refine its accreditation standards and to review accredited programs for compliance with the standards, ACGME relies on experts in the various medical specialties. Twenty-six specialty-specific committees, known as Residency Review Committees, periodically initiate revision of the accreditation standards and review accredited programs in each specialty and its subspecialties. The standards revision process includes solicitation of comment from interested parties and the public. The ACGME board of directors is ultimately responsible for the revision of standards and accreditation decisions. There is a review

committee for the transitional year, a one-year program that prepares newly graduated physicians for entry into a specialty that accepts residents in the second residency year, and an Institutional Review Committee for the review of the more than 400 institutions that sponsor programs in two or more specialties. The membership of the residency review and transitional year committees is made up of physicians. Often these are medical educators who have gained a reputation for expertise in residency education.

Appointing organizations to all Residency Review Committees include the American Medical Association ("AMA") and the member boards of ABMS. In many specialties, the academic specialty organization also appoints a portion of the Residency Review Committee members.

Nominating organizations to the ACGME's board of directors include ABMS, the American Hospital Association, the AMA, the Association of American Medical Colleges, and the Council of Medical Specialty Societies. In addition to twenty directors nominated by the five member organizations, the board of directors includes two resident physician members, the chair of the ACGME Council of Review Committee Chairs, and three public members. A federal government representative has the right of attendance and voice at meetings of the board of directors, but does not vote.

To gain and maintain accreditation, residency programs are expected to comply with the Program Requirements for their discipline, which requirements provide detailed descriptions of type and duration of training. In addition, institutions sponsoring residency programs are expected to adhere to the Institutional Requirements. Compliance with the ACGME's accreditation standards is measured through periodic review of all programs. Each year, the Residency Review Committees review nearly one-half of all accredited programs.

Approximately 2,200 of these reviews involve a formal on-site visit to the program; the remaining reviews are based on documents each program provides to ACGME. On average, each accredited residency program is site-visited every 3.7 years. Sponsoring institutions are also site-visited periodically. The interval between site visits ranges from one to five years, with a longer period indicating that the ACGME and Residency Review Committees are more confident about the ability of a given program or institution to provide quality education.

All new residency programs begin as applications, and go through a period of "provisional" accreditation. Programs that have demonstrated compliance with the accreditation standards receive full accreditation. If a program is found to have areas of non-compliance or deficiencies, ACGME lists these as specific citations in its accreditation letter to the program and expects the program to come into compliance. The Residency Review Committees often monitor programs' progress in addressing deficiencies. If a program has significant deficiencies, it may be given a warning or placed on probation. The intent is to alert the program and its sponsoring institution to the need for improvement in the areas identified as deficient by the Residency Review Committee or face more serious action by the ACGME.

Ultimately, programs that fail to comply with the standards have their accreditation withdrawn. It is rare that a program's accreditation is withdrawn because of failure to comply with a single standard, but this can occur for very serious deficiencies. The ACGME's actions in establishing standards, and in withdrawing the accreditation of programs that fail to demonstrate compliance, have been affirmed by several court decisions.

A listing of all accredited programs, their accreditation status, and time to the next site visit can be found on the ACGME website.

RELIEF REQUESTED

For the foregoing reasons, the Accreditation Council for Graduate Medical Education must decline the Court's invitation to take a position on the issues identified in the order of July 12, 2005.

Respectfully submitted,

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